

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 360 - COGENERATION AND SMALL POWER PRODUCTION

SUMMARY: This rule establishes the principles and procedures used by the Commission in setting rates for purchases of electricity from small power production facilities and cogenerators.

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**§1 GENERAL PROVISIONS**

A. **Definitions.** Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617, shall have the same meaning for purposes of this chapter as they have under PURPA, unless further defined in this chapter. In addition the following definitions apply for purposes of this chapter.

1. "Affiliate" means a person who:

a. Directly controls, is controlled by or is under common control with, a qualifying facility or industrial enterprise; or

b. Substantially owns, directly or indirectly, or operates, a qualifying facility or industrial enterprise.

2. "Associate" means:

a. An affiliate; or

b. A person that contracts to receive the thermal output of a cogeneration facility.

3. "Avoided costs" means the incremental costs to an electric or transmission and distribution utility of electric energy, capacity, load management, and/or conservation measures which, but for the purchase from the qualifying facility or qualifying facilities, such utility would obtain from another source. After the date of retail access, "avoided costs" mean the market value of the electric energy or capacity supplied by a qualifying facility to a transmission and distribution utility.

4. "Back-up power" means electric energy or capacity supplied by an electric or transmission and distribution utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

5. "Biomass" means any organic material not derived from fossil fuels.

6. "Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for electrical power production.

7. "Cogeneration facility" means equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for heating or cooling purposes, through the sequential use of energy.

8. "Energy input" in the case of energy in the form of natural gas or oil is to be by the lower heating value of the natural gas or oil.

9. "Existing contract" means a contract or an amendment to a contract executed prior to September 19, 1997 under which a qualifying facility sells energy or energy and capacity to an electric or transmission and distribution utility.

10. "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric or transmission and distribution utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, or industrial enterprise under section 7(A), including transmission or distribution of the qualifying facility's power to another utility's transmission or distribution system to the extent such costs exceed the corresponding costs which the utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs. Interconnection costs shall also include an equitable portion of the cost of improvements to the utility's existing transmission and distribution facilities necessitated by the interconnection with a qualifying facility or industrial enterprise.

11. "Interruptible power" means electric energy or capacity subject to interruption by the provider of such energy or capacity under specified conditions.

12. "Maintenance power" means electric energy or capacity supplied by an electric or transmission and distribution utility during scheduled outages of the qualifying facility.

13. "Natural gas" means either natural gas unmixed, or any mixture of natural gas and synthetic gas.

14. "Net energy" means for any time period the total electrical energy used by a qualifying facility plus the total electrical energy used by any related retail consumer of electricity located at the same site minus the total electrical generation of the qualifying facility.

15. "Net energy billing" means a billing and metering practice that uses a single meter, capable of registering the flow of electricity in two directions, to record net energy transactions between an electric utility and a qualifying facility.

16. "Oil" means crude oil, residual fuel oil, natural gas liquids, or any refined petroleum product.

17. "Parallel operation" means the synchronous operation of a utility's generating system with the electrical generating equipment of a qualifying facility.

18. "Person" means a corporation, partnership, limited partnership, business association, trust, estate, municipal or quasi-municipal entity, or natural person.

19. "Qualifying facility" means any small power producer or cogenerator which meets the criteria set forth in section 2 of this chapter.

20. "Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

21. "Small electric utility" means any electric utility that is not an investor-owned electric or transmission and distribution utility.

22. "Supplementary firing" means an energy input to the cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility or only in the electric generation process of a bottoming-cycle cogeneration facility.

23. "Supplementary power" means electric energy or capacity, regularly used by a qualifying facility in addition to that which the facility generates itself.

24. "System emergency" means a condition on a utility system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

25. "Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and the reject heat from electrical power production is then used to produce useful thermal energy.

26. "Total energy output" of a topping-cycle cogeneration facility is the sum of the useful electrical power output and useful thermal energy output.

27. "Total energy input" means the total energy of all forms supplied from external sources other than supplementary firing to the facility.



28. "Useful power output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the electrical power production process.

29. "Useful thermal energy output" of a topping-cycle cogeneration facility means the thermal energy made available for use in any process or used in any heating or cooling application.

30. "Variable operating and maintenance cost" means that portion of the operating and maintenance expenses associated with generating facilities which change with changes in the use of those facilities.

31. "Waste" means by-product materials other than biomass.

B. Exceptions. Upon the request of any person subject to the provisions of this chapter or upon its own motion, the Commission may deviate from the provisions of this chapter for good cause shown or to the extent it deems necessary to further the purposes and policies of this chapter.

## **§2 QUALIFYING COGENERATION AND SMALL POWER PRODUCTION FACILITIES**

### **A. General Requirements for Qualification**

1. Small power production facilities. A small power production facility is a qualifying facility if it:

- a. meets the size criteria specified in § 2(B)(1);
- b. meets the fuel use criteria specified in § 2(B)(2); and
- c. meets the ownership criteria specified in § 2(D).

2. Cogeneration facilities. A cogeneration facility is a qualifying facility if it:

- a. meets the applicable operating and efficiency standards specified in § 2(C); and
- b. meets the ownership criteria specified in § 2(D).

### **B. Criteria for Qualifying Small Power Production Facilities**

#### **1. Size of the facility**

a. Maximum size. The power production capacity of the facility for which qualification is sought, together with the capacity of any other facilities which use the same energy resource, are owned by the same person, and are located at the same site, may not exceed 80 megawatts.

b. Method of calculation. For purposes of this paragraph, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility for which qualification is sought and, for hydro-electric facilities, if they use water from the same impoundment for power generation. For purposes of making this determination the distance between facilities shall be measured from the electrical generating equipment of a facility.

#### **2. Fuel use**

a. The primary energy source of the facility must be biomass, waste, renewable resources, or any combination thereof, and more than 75 percent of the total energy

input must be from these sources. Any primary energy source which, on the basis of its energy content, is 50 percent or more biomass shall be considered biomass.

b. Use of oil, natural gas, and coal by a facility may not, in the aggregate, exceed 25 percent of the total energy input of the facility during any calendar-year period.

C. Criteria for Qualifying Cogeneration Facilities

1. Operating and efficiency standards for topping-cycle facilities

a. Operating standard. For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must, during any calendar-year period, be no less than 5 percent of the total energy output.

b. Efficiency standard. For any topping-cycle cogeneration facility for which any of the energy input is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility plus one-half of the useful thermal energy output, during any calendar-year period, must:

i) subject to § 2(C)(1)(b)(ii), be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; or

ii) if the useful thermal energy output is less than 15 percent of the total energy output of the facility, be no less than 45 percent of the total energy input of natural gas or oil to the facility; or

iii) for any topping-cycle cogeneration facility not subject to subsection 2(C)(1)(b) there is no efficiency standard.

2. Efficiency standards for bottoming-cycle facilities

a. For any bottoming-cycle cogeneration facility for which any of the energy input as supplementary firing is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility must, during any calendar-year period, be no less than 45 percent of the energy input of natural gas or oil for supplementary firing.

3. Waiver. The Commission may waive any of the requirements of paragraphs (1) and (2) of this subsection upon a showing that the facility will consume significantly less energy than would be consumed by the facility and the electric utility if the cogeneration facility were not constructed.

D. Ownership Criteria

1. General rule. Prior to the date of retail access, a cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power, other than power production facilities. After the date of retail access, a cogeneration facility or small power production facility may not be owned by a transmission and distribution utility or its affiliate unless permitted pursuant to 35-A M.R.S.A. § 3204(6).

2. Ownership test

a. For purposes of this section, a cogeneration or small power production facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power if more than 50 percent of the equity interest in the facility is held by an electric utility or utilities, or by a public utility holding company, or companies, or any combination thereof. If a wholly or partially owned subsidiary of an electric utility or public utility holding company has an ownership interest in a facility, the subsidiary's ownership interest shall be considered as ownership by an electric company or public utility holding company. For purposes of this section a company shall not be considered to be an "electric utility" company if it is a subsidiary of an electric utility holding company which is exempt by rule or order adopted or issued pursuant to section 3(a)(3) or 3(a)(5) of the Public Utility Holding Company Act of 1935, 14 U.S.C. 79c(a)(3), 79c(a)(5); or is declared not to be an electric utility company by rule or order of the Securities and Exchange Commission pursuant to section 2(a)(3)(A) of the Public Utility Holding Company Act of 1935. 15 U.S.C. § 79b(a)(3)(A).

b. Any electric utility that owns any part of a qualifying facility shall maintain separate records for all income investment and expenses associated with its ownership, operation or management of the qualifying facility.

E. Exceptions. Notwithstanding any provision of this section any small power producer or cogenerator which is considered to be a qualifying facility by the Federal Energy Regulatory Commission shall be deemed to be a qualifying facility for purposes of this chapter.

**§3 ADMINISTRATIVE DETERMINATION OF AVOIDED COSTS**

A. Applicability. Except as otherwise provided, this section applies to each investor-owned electric or transmission and distribution utility in the State. This section shall remain effective until the date of retail access.

B. Energy and Capacity. Each electric or transmission and distribution utility shall submit the following pursuant to a schedule set by Commission order.

1. Avoided energy costs

a. The estimated avoided energy costs on the electric utility's system, for various levels of purchases from qualifying facilities. Except as provided in this subsection such levels of purchases shall be stated in blocks of not more than 50 megawatts for utilities with a peak demand of 500 megawatts or more, and in blocks equivalent to not more than 10% of the peak demand for utilities of less than 500 megawatts. At least two such blocks shall be provided. In the event that the utility can reasonably be expected to purchase an amount of energy at the rates established by the Commission pursuant to Section 4(C) which exceeds the amount of energy reflected in the first of the two blocks described above then the first block shall be stated in an amount equal to the reasonably anticipated purchases. The avoided costs shall be stated on a cents per kilowatt-hour basis (showing the same number of significant digits as were employed by the electric utility in its last Fuel Cost Adjustment tariff), during daily peak and off-peak periods, by month, for the most recent 12 months, and in each of the next 18 months or until the date of retail access if that date occurs within the 18 month period.

b. The utility's avoided energy costs shall include, as applicable, reasonable estimates of avoided fuel costs, avoided start-up costs, avoided variable operating and maintenance costs, and energy purchase costs.

c. In each estimate required by subparagraph (a) above, the avoided costs shall be calculated by determining the difference between the total electric energy costs estimated to serve a utility's load and the total electric energy costs estimated for that load reduced in every hour consistent with the block and time periods discussed above divided by the kilowatt hours reflected in such load reductions.

2. Avoided capacity costs.

a. The estimated avoided capacity costs on the electric utility's system, for various levels of purchases from qualifying facilities. Except as provided in this subsection, such levels of purchases shall be stated in blocks of not more than 50 megawatts for utilities with a peak demand of 500 megawatts or more, and in blocks equivalent to not more than 10% of the peak demand for utilities of less than 500 megawatts. At least two such blocks shall be provided. In the event that the utility can reasonably be expected to purchase an amount of energy and capacity at the rates established by the Commission pursuant to Section 4(C) which exceeds the amount of energy and capacity reflected in the first of the two blocks described above then the first block shall be stated in an amount equal to the reasonably anticipated purchases. The avoided costs shall be stated on a cents per kilowatt-hour basis (showing the same number of significant digits as were employed by the electric utility in its last Fuel Cost Adjustment tariff), during daily peak and off-peak periods, by month, for the most recent 12 months, and in each of the next 18 months or until the date of retail access if that date occurs within the 18 month period.

b. The utility's avoided capacity costs shall include, as applicable, reasonable estimates of avoided capacity construction costs, capacity purchase costs, and capacity sale values.

c. In each estimate required by subparagraph (a) above, the avoided costs shall be calculated by determining the difference between the total electric capacity costs estimated to serve a utility's load and the total electric capacity costs estimated for that load reduced in every hour consistent with the block and time periods discussed above divided by the kilowatt-hours reflected in such load reductions.

3. Supporting analyses and data. A copy of all analyses used to derive the estimates required by paragraphs (1) and (2) above together with all input data and a detailed description of the methodology used and all assumptions employed.

C. Commission Review. Material submitted pursuant to subsection B above shall be subject to review and approval by the Commission. In any such proceeding the utility has the burden of coming forward with justification for its data.

#### **§4 ARRANGEMENTS BETWEEN ELECTRIC UTILITIES AND QUALIFYING FACILITIES**

##### **A. Scope**

1. Applicability. This section applies to the regulation of sales and purchases between qualifying facilities and electric or transmission and distribution utilities, except as provided in section 8 below.

2. Negotiated rates or terms. Nothing in this rule limits the authority of any electric or transmission and distribution utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be established by this chapter; or affects the validity of any contract entered into between a qualifying facility and an electric or transmission and distribution utility for any purchase.

3. Generation or distribution for own use. Notwithstanding any provision of this chapter any small power producer or cogenerator may generate or distribute electricity through its private property or its associates' private property solely for its use, the use of its tenants, or the use of its associates without approval or regulation by the Commission.

B. Electric Utility Obligations

1. Obligation to purchase from qualifying facilities

a. Existing contracts. Each electric or transmission and distribution utility must purchase from qualifying facilities pursuant to the terms established in an existing contract, or, as applicable, pursuant to rates established by the Commission in accordance with this chapter.

b. Purchases not pursuant to existing contracts. Each electric or transmission and distribution utility shall purchase any energy which is made available from a qualifying facility at a price and under terms agreeable to the utility and the qualifying facility or at rates for short-term energy purchases as established by the Commission in accordance with the provisions of this chapter. The utility obligation to purchase energy which is made available from a qualifying facility at short-term energy rates shall remain effective until the date of retail access.

2. Obligation to sell to qualifying facilities. Prior to the date of retail access, each electric or transmission and distribution utility shall sell to any qualifying facility, in accordance with this chapter, any energy and capacity and transmission and distribution services requested by the qualifying facility, provided the qualifying facility is located within the utility's service territory. After the date of retail access, each electric or transmission and distribution utility shall sell to any qualifying facility any transmission and distribution service available to other retail customers requested by the qualifying facility, provided the qualifying facility is located within the utility's service territory.

3. Obligation to interconnect

a. Any electric or transmission and distribution utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales by any utility under this chapter provided, however, that no interconnection shall be made unless the interconnecting utility inspects the interconnection facility and determines that the facility:

i) complies with the requirements of the National Electric Safety Code;

ii) provides reasonable protection of the interconnecting utility's generating, transmission and distribution systems; and

iii) is designed to prevent a violation of the prohibition contained on § 4(C)(1)(c). The obligation to pay for any interconnection costs shall be determined in accordance with subsection F of this section.

b. No interconnecting utility may unreasonably refuse to inspect an interconnection facility nor may a utility unreasonably delay the performance of any such inspection.

4. Parallel operation. Each electric utility shall offer to operate in parallel with a qualifying facility.

C. Rates for Purchases

1. General Provisions

a. Rates for purchases shall:

i) be just and reasonable with respect to the customers of the electric or transmission and distribution utility and in the public interest; and

ii) not discriminate against qualifying cogeneration and small power production facilities.

b. Nothing in this section requires any electric or transmission and distribution utility to pay more than its avoided costs for purchases nor shall this chapter be construed to limit or otherwise discourage an electric or transmission and distribution utility or qualifying facility from negotiating any reasonable price or other contract terms agreeable to the utility and the qualifying facility.

2. Short term energy purchases

a. Prior to the date of retail access, with respect to purchases of energy made by electric or transmission and distribution utilities from qualifying facilities on an as available basis the rates established by the Commission shall equal the avoided energy costs determined in accordance with section 3 after consideration of the factors set forth in paragraphs 4 of this subsection.

b. For periods after the date of retail access, the Commission shall set rates in accordance with the following procedures.

(i) Filing. On January 15, 2000 and on January 15 of each succeeding year, each transmission and distribution utility that has a qualifying facility contract that contemplates Commission-established short term energy rates for the 12 month period beginning March of that year shall file rates with the Commission calculated as described in this subparagraph and serve copies of the filing on a predetermined service list. The short term energy



rates shall be calculated as the sale prices accepted pursuant to the sale of the rights to the energy component of qualifying facilities contracts pursuant to 35-A M.R.S.A. § 3204(4) for each month during the 12 month period beginning March of that year. The short term energy rates shall be time differentiated for the same periods and expressed on a cents-per-kilowatt hour basis with the same number of significant digits as in short-term energy rates in effect as of January 1, 1997.

(ii) Procedure. Any interested person may object to the utility's proposed short term energy rates by demonstrating that the rates are not reasonably representative of short-term wholesale energy costs in Maine or are otherwise inconsistent with law. Objections must be filed by February 15. If no objections are filed, the short term energy rates shall become effective on March 1 unless suspended by the Commission or its Director of Technical Analysis. If an objection is filed, the Commission or its Director of Technical Analysis may suspend the filing. In the event the filing is suspended, the Commission will adopt procedures for establishing short-term energy rates.

3. Standard rates for energy and capacity purchases

a. Prior to the date of retail access, standard rates for purchases of energy by a utility will be established by the Commission in accordance with section 3 after consideration of the factors in paragraphs 4 and 5 of this subsection. These rates will be available to any qualifying facility with an installed capacity of 1,000 kilowatts or less that elects to sell energy as available and that has been unable to reach a negotiated price with the electric or transmission and distribution utility.

b. Prior to the date of retail access, standard rates for purchases of energy and capacity sold by a qualifying facility pursuant to a 5, 10, 15, or 18-year contract will be established by the Commission after review of the filing of avoided cost data filed by the utility pursuant to section 3 of this chapter and consideration of the factors in paragraphs 4 and 5 of this subsection. These rates will be available to any qualifying facility that has an installed capacity of 1,000 kilowatts or less that has been unable to negotiate a contract with the electric utility. Separate time differentiated rates shall be established.

c. Prior to the date of retail access, standard rates established pursuant to subsections (a) and (b) above will correspond to the blocks described in section 3. In determining whether the standard rates for a block have been committed and thus no longer available to qualifying facilities, the Commission will compare the total avoided cost associated with a block to the total estimated cost of the purchases from qualifying facilities that have executed contracts since the standard rates were established.

d. For periods after the date of retail access, the Commission shall set standard rates for purchase of energy and capacity sold by a qualifying facility with an installed capacity of 1,000 kilowatts or less in accordance with the following procedures:

i. Filing. On January 15, 2000 and on January 15 of each year following a new sale of the rights to capacity and energy of qualifying facility contracts pursuant to 35-A M.R.S.A. § 3204(4), each transmission and distribution utility that has a qualifying facility contract that contemplates Commission-established standard rates for purchases of energy and capacity shall file rates with the Commission calculated as described in this subparagraph and serve copies of the filing on a predetermined service list. The capacity and energy rates shall be calculated as the sale prices accepted pursuant to the sale of the rights to the energy and capacity components of qualifying facility contracts pursuant to 35-A M.R.S.A. § 3204(4) for each month beginning March 1 and continuing until the end of the sale period. The capacity and energy rates shall be time differentiated.

ii. Procedure. Any interested person may object to the utility's proposed capacity and energy rates by demonstrating that the rates are not reasonably representative of wholesale capacity and energy costs in Maine or are otherwise inconsistent with law. Objections must be filed by February 15. If no objections are filed, the capacity and energy rates shall become effective on March 1 unless suspended by the Commission or its Director of Technical Analysis. If an objection is filed, the Commission or its Director of Technical Analysis may suspend the filing. In the event the filing is suspended, the Commission will adopt procedures for establishing capacity and energy rates.

4. Factors affecting rates for purchases of energy.

In determining rates for purchase of energy, the Commission may consider the following factors to the extent practicable.

a. The availability of energy from a qualifying facility during on-peak and off-peak periods.

b. The ability of the utility to dispatch the qualifying facility. If the utility is able to dispatch the output of the qualifying facility, without reducing the total energy production of the qualifying facility, the energy portion of the standard rates established by the Commission pursuant to paragraph 3(a) and (b) shall be increased 3 percent unless otherwise ordered by the Commission.

c. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities. If the utility is able to schedule the maintenance of the qualifying facility, the energy portion of the standard rates

established by the Commission pursuant to paragraph 3(a) and (b) shall be increased 1 percent unless otherwise ordered by the Commission.

d. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility. Unless otherwise ordered by the Commission, the rates established for purchases from any specific qualifying facility shall be increased to reflect the same level of line losses as used to establish retail rates for any class of customer that is served at a similar voltage level.

e. The usefulness of energy supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation.

5. Factors affecting rates for purchases of energy and capacity. In establishing rates for the purchase of capacity and energy the Commission may consider the factors discussed in subsection 4 above and, in addition, may consider the following factors to the extent practicable.

a. The availability of capacity from a qualifying facility during on-peak and off-peak periods.

b. The expected or demonstrated reliability of the qualifying facility.

c. The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement and sanctions for non-compliance;

d. The individual and aggregate value of capacity from qualifying facilities on the electric utility's system.

6. When the Commission determines standard rates pursuant to this section, the Commission will aggregate qualifying facilities and treat them as one in considering the factors listed in paragraphs 4 and 5.

D. Periods During Which Purchases Are Not Required

1. Any electric or transmission and distribution utility which gives notice pursuant to paragraph 2 of this subsection will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities can reasonably be expected to result in negative avoided costs.

2. Any electric or transmission and distribution utility seeking to invoke paragraph 1 of this subsection must notify the Commission and each affected qualifying facility at least 48 hours prior to period described above. Such notice shall include a description of the operational circumstances, and the duration of the period.

3. Any electric or transmission and distribution utility which fails to comply with the provisions of paragraph 2 of this subsection or which unreasonably invokes the provisions of this subsection will be required to pay the same rate for such purchase of energy or capacity as would be required had the period described in paragraph 1 of this subsection not occurred.

E. Additional Services to be Provided to Qualifying Facilities

1. Prior to the date of retail access, upon request of a qualifying facility in the utility's service territory, each electric or transmission and distribution utility shall provide at reasonable rates:

- a. supplementary power;
- b. back-up power;
- c. maintenance power; and
- d. interruptible power.

After the date of retail access, upon request of a qualifying facility, each electric or transmission and distribution utility shall provide at reasonable rates transmission and distribution services.

2. The Commission may waive any requirement of subsection (E)(1) of this section if, after notice in the area served by the utility and after opportunity for a public hearing, Commission finds that compliance with such requirement will:

- a. impair the utility's ability to render adequate service to its customers; or
- b. place an undue burden on the utility.

F. Interconnection Costs

1. Obligation to pay. Each qualifying facility shall be obligated to pay all interconnection costs as defined in this chapter.

**§5 NET ENERGY BILLING**

A. Net Billing Prior to Retail Access

1. Customer Qualification. Any qualifying facility that has an installed capacity of 100 KW or less may at its option sell electricity to an electric utility on a net energy billing basis.

2. Rates. Net energy sales during any billing period shall be at rates established pursuant to section 4(C)(2).

3. Second Meter. Nothing in this subsection shall prohibit a utility from installing additional meters to record purchases and sales separately, provided, however, that no qualifying facility which elects to sell electricity on a net energy billing basis shall be charged for the cost of the additional meters or other necessary equipment.

4. New Contracts. Any qualifying facility that has an installed capacity of 100 kW or less may obtain a customer net energy billing contract pursuant to this subsection. Any such new contract must terminate on or before February 28, 2000. Except for the contract duration and rates, contracts entered pursuant to this subsection shall contain the terms identical to those in the utility's existing customer net energy billing standard contract. The terms of the standard contract may be modified subject to Commission approval.

B. Net Billing Pursuant to Existing Contracts After Retail Access

1. Existing Customer Net Billing Contracts. Any qualifying facility that has an existing customer net energy billing contract on the effective date of this section shall be billed by the transmission and distribution utility on a net energy basis for the duration of the contract.

2. Generation Service After Retail Access. Any qualifying facility that has an existing customer net energy billing contract may obtain retail generation service on a net billing basis from any competitive electricity provider that agrees to provide service and purchase energy on such a net energy basis. If the qualifying facility obtains generation service from the standard offer, the standard offer provider(s) shall provide service and purchase energy on a net energy

basis. If there are more than one standard offer providers in a service territory, each provider shall purchase net energy in the same proportion as its standard offer obligation.

3. Rates. If the qualifying facility obtains retail generation service from a competitive electricity provider, net energy during any billing period shall be purchased by the competitive electricity provider at rates agreed upon by the qualifying facility and the competitive electricity provider. If the qualifying facility obtains standard offer service, net energy during any billing period shall be purchased by the standard offer provider(s) at rates established pursuant to the existing contract.

4. Second Meter. Nothing in this subsection shall prohibit a utility from installing additional meters to record purchases and sales separately, provided, however, that no qualifying facility which elects to sell electricity on a net energy billing basis shall be charged for the cost of the additional meters or other necessary equipment.

## **§6 SYSTEM EMERGENCIES**

A. Discontinuance of Purchases and Sales During System Emergencies. During any system emergency, an electric or transmission and distribution utility may discontinue:

1. purchases from a qualifying facility if such purchases would contribute to such emergency; and
2. sales to a qualifying facility, provided that such discontinuance is on a nondiscriminatory basis.

## **§7 COMMISSION PROCEDURES**

A. Petition For Establishing Rates, Terms, and Conditions

1. Filing. If after good faith negotiations a qualifying facility and an electric or transmission and distribution utility are unable to reach an agreement, the qualifying facility or utility may petition the Commission to establish any rate, term, condition or other provision of a contract that is rendered impractical or impossible to perform or implement as a result of the restructuring of the electric industry.

2. Contents. The petition shall include the names and addresses of the qualifying facility and the utility, a description of the rate, term, condition or other contractual provision for which the petitioner seeks Commission intercession, an explanation of why the rate, term, condition or other contractual provision has been rendered impractical or impossible to

perform or implement as a result of the restructuring of the electric industry, a copy of the contract, and any Commission orders relevant to the intent and purposes of the disputed provisions.

3. Service. The petitioner shall serve a copy of the petition by regular mail or fax to the affected utility or qualifying facility.

4. Response. The affected utility or qualifying facility shall file a response to the petition within 7 days of receiving service.

5. Timing. The Commission shall issue an order resolving the issues raised by the petition within 90 days of filing.

6. Resolution. The Commission shall make a finding as to whether the disputed rate, term, condition, or other contractual provision has been rendered impractical or impossible to perform or implement as a result of the restructuring of the electric industry. If the Commission makes such a finding, it shall establish a rate, term, condition, or other contractual provision that preserves the intent and purposes embodied in the disputed contractual provision(s).

B. Commission Investigation

The Commission at any time may initiate an investigation or any person may petition the Commission to initiate an investigation of any matters relevant to the matters contained in this Chapter. The petition shall contain an explanation of the scope of the investigation sought. The Commission shall determine within sixty (60) days of the filing whether an investigation shall be opened. If a Notice of Investigation is not issued within 60 days, the request is denied. If an investigation is opened, procedures set forth in subsection B shall be followed.

## **§8 SMALL ELECTRIC UTILITIES**

A. Applicability. This section applies to each small electric utility. Except as specified, other sections of this rule shall not apply to small electric utilities. This section shall remain in effect until the date of retail access.

1. Wheeling utility. If a small electric utility agrees to wheel the power of a qualifying facility to another utility under terms mutually agreeable or as set by the Commission, the small electric utility shall be exempt from this chapter.

2. Non-Wheeling utility. If a small electric utility and a qualifying facility do not wish to wheel the qualifying facility's power, the small electric utility shall be subject to the conditions set forth in subsection B through D.

B. Availability of small electric utility system cost data

1. Information provided on request. Each small electric utility subject to subsection A, paragraph 2 shall upon request of any qualifying facility:

a. Provide comparable data to that required under subsection B of section 3.

b. With regard to an electric utility which obtains its requirements for electric energy and capacity primarily from another electric utility or utilities, the utility may, at its option, provide the data of its supplying utility and the rates at which it currently purchases such energy and capacity.

2. Failure to provide information on request. If any such electric utility fails to provide such information on request, the qualifying facility may apply to the Commission for an order requiring that the information be provided.

C. Groups of small electric utilities. Two or more small electric utilities may form a group for the purpose of negotiations with and purchases from one or more qualifying facilities when the formation of such a group facilitates such negotiations and purchases. When such a group is formed, for the purposes of this rule, the Commission shall consider it as if it were a single small electric utility.

D. Obligation to Purchase from Qualifying Facilities. Each small electric or transmission and distribution utility subject to subsection A, paragraph 2 shall purchase any energy which is made available directly to the utility from a qualifying facility at a price and under terms agreeable to the utility and the qualifying facility or as established by the Commission in accordance with the provisions of this chapter.

**BASIS STATEMENT:** The factual and policy basis for this rule is set forth in the Commission's Statement of Factual and Policy Basis and Order Adopting Rule, Commission Docket No. 97-794, issued on March 10, 1998. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.



**AUTHORITY:** 35-A M.R.S.A. §§ 104, 111, 1301, 1306, 3301-3308; P.L. 1997, ch. 316, §§ 5, 6, 7, 8, 9.

**EFFECTIVE DATE:** This rule was approved as to form and legality by the Attorney General on March 17, 1998. It was filed with the Secretary of State on March 17, 1998 and will be effective on March 22, 1998.